



## Declaration of critical habitat for the Wollemi Pine (*Wollemia nobilis*)



(Pursuant to s.44 and 47 of the *Threatened Species Conservation Act 1995*)

**January 2007**



**Australian Government**

**Department of  
Environment and  
Conservation (NSW)**

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# Critical Habitat determination for the Wollemi Pine (*Wollemia nobilis*) Araucariaceae

## Executive Summary

The Wollemi Pine (*Wollemia nobilis*) is a relict species from the ancient Araucariaceae family. It is only known from a single population in Wollemi National Park within the Greater Blue Mountains World Heritage Area. It is listed as an endangered species on both the New South Wales *Threatened Species Conservation Act 1995* (TSC Act) and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

This report details the area that has been identified by the Department of Environment and Conservation (DEC) as constituting critical habitat for the Wollemi Pine. It has been prepared in accordance with Part 3 of the TSC Act. The area recommended by the DEC for listing as critical habitat is described. A summary of the legal and planning ramifications of the declaration of critical habitat is also presented.

The identification report also includes regulations in accordance with Section 51 of the TSC Act to prohibit access to the critical habitat area and penalties for failure to comply with a direction given by a designated officer to leave the critical habitat area. In order to protect the Wollemi Pine, in accordance with Section 146 (2)(a) of the TSC Act, a map of the identified area will not be disclosed until the Wollemi Pine Recovery Team considers the threats of unauthorised visitation have reached a significant level and release of information about the location is absolutely necessary for the increased protection of wild Wollemi Pines. Some offences will arise only when the area of the critical habitat has been disclosed. It is however noted that it is an offence to “pick” a Wollemi Pine or “damage” its habitat at any time.



**Lisa Corbyn**  
Director-General



**Bob Debus MP**  
Minister for the Environment



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## 1. Introduction

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The Wollemi Pine (*Wollemia nobilis*) is listed as endangered on Schedule 1 of the NSW *Threatened Species Conservation Act 1995* and as endangered under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. It is a tree which grows to 40 m and is currently known from only one population consisting of several stands of fewer than 100 adult plants and about 200-300 juveniles/seedlings in total from Wollemi National Park, within the Greater Blue Mountains World Heritage Area. Populations within Wollemi National Park are potentially threatened by the introduction and spread of pathogens, damage by collectors and catastrophic fire events.

A recovery plan was prepared (NPWS 1999) for the species. The recovery plan has been revised and has been finalised (DEC 2006). Action 10.1.7 of the revised recovery plan requires the Department of Environment and Conservation (DEC) to prepare a recommendation to the NSW Minister for the Environment for the identification of critical habitat for the Wollemi Pine.

The identification of critical habitat is provided for in Section 3 of the TSC Act. Section 37 of the Act states that habitat eligible to be declared critical habitat is “*the whole or any part or parts of the area or areas of land comprising the habitat of an endangered species, population or ecological community that is critical to the survival of the species, population or ecological community...*”

This document details the DEC’s consideration of what is critical habitat for the Wollemi Pine. It has been prepared in accordance with Part 3 of the TSC Act (see Section 4) and constitutes a formal recommendation pursuant to s.40 of that Act.

## 2. Ecology

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### 2.1 Distribution

The Wollemi Pine is a relict species currently known to occur in only one population in Wollemi National Park on the Central Tablelands of New South Wales in south eastern Australia. This population occurs in deep sandstone gorge formations. The gorge walls are composed of Triassic sandstones from the Narrabeen Group.

### 2.2 Habitat

The Wollemi Pine occurs in the warm temperate rainforest and rainforest margins in a *Eucalyptus* spp. forest/woodland complex within the Sydney Sandstone Biome of the eastern coast and tablelands of New South Wales (Floyd 1984). This warm temperate rainforest habitat is dominated by coachwood *Ceratopetalum apetalum* and sassafras *Doryphora sassafras*. Most individuals of the Wollemi Pine are associated with gorges and occur on large ledges or are inserted in crevices in the cliffs. Details of the flora associated with the Wollemi Pine are found in DEC (2006).

## 3. Management Issues

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### 3.1 Key threatening processes

The following key threatening processes, as listed on Schedule 3 of the TSC Act, are potentially relevant to the Wollemi Pine:

- *High frequency fire resulting in the disruption of life cycle processes in plants and animals and loss of vegetation structure and composition;*
- *Infection of native plants by *Phytophthora cinnamomi*;*
- *Anthropogenic climate change.*

### 3.2 Other threats

The Wollemi Pine is considered to be endangered due to its extremely restricted distribution, the very limited number of adult individuals and its very slow rate of recruitment of new genetic individuals. It is also currently threatened by dieback from the pathogen *Phytophthora cinnamomi*. The species is considered to be proximally threatened by unauthorised collection of seed and vegetative material (this may impede the long-term

replacement of reproductive plants and cause a loss of genetic diversity), catastrophic fire events, the introduction and spread of pathogens, especially soil- and water-borne species and other impacts from unauthorised site visits such as trampling of seedlings, compaction of soil, the introduction of weeds and the increased risk of fire.

#### **4. Legislative Context**

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The declaration of critical habitat serves primarily as a guide for planning under Part 3 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and a trigger which ensures a rigorous assessment of all activities and development proposals (sensu the EP&A Act), and any other action that has the potential to damage critical habitat.

The implications under NSW legislation of the declaration of an area as critical habitat are described in full in Appendix 2. It is important to note that the declaration of critical habitat does not necessarily prohibit activities in declared areas. The TSC Act does however, authorise the making of regulations that may prohibit or regulate certain actions on declared critical habitat. The types of actions that are proposed to be subject to regulations are described in Section 6 of this report.

##### **4.1 The process of making a recommendation**

Sections 39 to 41 of the TSC Act outline the process by which the Director General of DEC prepares and publishes a recommendation for the identification of critical habitat ("the recommendation"). The Director General must consult with the NSW Scientific Committee regarding the identification. The recommendation is then prepared and all persons likely to be affected by the recommendation are notified. The recommendation is then placed on public exhibition. Any submissions received are considered and the recommendation finalised. Following public exhibition, there were no public submissions on the recommendation for critical habitat and the NSW Scientific Committee had no comments on the recommendation.

Sections 43-48 of the TSC Act describe the manner in which the recommendation is forwarded to the Minister for the Environment and the process by which the Minister considers the recommendation to declare the area as critical habitat.

##### **4.2 Consultation undertaken to prepare this recommendation**

In preparing this recommendation the DEC has undertaken formal and informal consultations on behalf of the Director General including:

- Consultation between the Director General and the Scientific Committee; and
- Consultation with the Wollemi Pine Recovery Team.

#### **5. Principles for Consideration in the Declaration of Critical Habitat**

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The identification of critical habitat is provided for in Section 3 of the TSC Act. In the context of the Wollemi Pine it is essential to include all land currently comprising the habitat of the species, as well as significant areas surrounding the current distribution that may be affected by factors that in turn may impact on the Wollemi Pine, e.g. weed and pollutant impacts in the catchment. The TSC Act allows the area defined as critical habitat to be modified in the future to take into account any translocation to introduce the species to a new area to minimise the risk of extinction at the one known population.

The declaration of critical habitat for the Wollemi Pine is primarily to identify an area to manage in relation to identified threats to the species in the wild. The declaration acts as a safeguard against activities occurring without any assessment of impact or without the correct level of assessment. It also allows for the preparation of regulations that may prohibit or regulate certain actions.

These principles therefore should have a profound bearing on the identification of the area of critical habitat. In simple terms, critical habitat should be of a design and sufficient size to ensure that all potential direct and indirect threats to the species and its habitat are always fully assessed



via the SIS process. The design and size of critical habitat should also ensure that the occurrence of the application of the SIS process to proposed developments, activities or actions that are very unlikely to have a significant impact on the species, either directly or indirectly, are avoided.

The specific threats to the Wollemi Pine considered here are:

- Large Scale Processes - Threats such as climatic change tend to operate outside of a planning/management framework because often only limited control can be exercised over them and they have the potential to affect large areas. Critical habitat designation is of limited effectiveness in dealing with such threats.
- Proximal effects – Actions, such as fire management, visitor access, weed invasion and control, pollution, changed hydrological conditions, nutrient enrichment, herbicides, pesticides, introduction and spread of plant disease, dispersal of weed or pest species and trampling by humans resulting from increased access to the area, that result in impacts to the Wollemi Pine or its habitat.

## **6. Recommended Option for the Identification of Critical Habitat for the Wollemi Pine**

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All known extant areas of the Wollemi Pine and the surrounding habitat in the catchment will be declared as critical habitat. This represents some 5,000 ha of the 500,000 ha Wollemi National Park, ie 1% of the Wollemi National Park. This allows for some buffer areas around the known population of the Wollemi Pine to be included as critical habitat. Factors including topography and drainage as well as adjacent land use were considered in determining the extent of the buffer zones. Given the scope of threats (Section 3) that are currently operating on the Wollemi Pine, the DEC considers that this option provides adequate protection to ensure the best chance of long-term conservation of the species.

In accordance with Section 51 of the TSC Act, regulations have been developed to assist with the implementation of the critical habitat recommendation. These regulations (Appendix 3) will take effect once the declaration has been published in the NSW Gazette. This publication will occur in conjunction with the release of this critical habitat determination.

A map of the recommended area has not been prepared for publication at this stage. Section 146 (2)(a) of the TSC Act provides for the Director General not to disclose the location of critical habitat if, to do so, would expose the critical habitat to a significant threat. Should it become necessary to publish a map (that is if the recovery team determines that the threats of unauthorised visitation have reached a significant level), a map will be published and the boundary of the defined area marked by signage. Accordingly, it is an offence against the regulations to damage critical habitat, even though a map has not been published. It is also an offence to “pick” a Wollemi Pine or “damage” its habitat in accordance with Section 118A and 118D of the *National Parks and Wildlife Act 1974*. These offences carry a maximum penalty of \$220 000 and \$110 000 respectively, and /or 2 years imprisonment.

## **7. Social and Economic Consequences**

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The social impacts of a declaration of critical habitat for the Wollemi Pine will be minimal as the species’ habitat is reserved within a national park and the potential for any DA under the EP&A act is unlikely. Those mainly affected will be a small group of people who may have chosen to go bushwalking in the area. It is noted that the recommended area to be declared and associated regulations only apply to 1% of a remote area of the Wollemi National Park. The declaration of critical habitat will result in the increased protection of its habitat from the potential for degradation and loss of a unique species. The conservation of the species will benefit society as a whole through the protection of this important iconic and relictual species.

The economic consequences of a declaration of critical habitat for the Wollemi Pine will relate to implementation costs. Implementation costs will include signage, surveillance, monitoring, community liaison and enforcement activities. Most of these actions are already included in duties

performed by relevant staff. For example, DEC officers already liaise with the public and monitor the site for impact and have a responsibility for investigating any breaches of the *National Parks and Wildlife Act 1974* and its regulations.

The declaration of critical habitat under the TSC Act requires the preparation of a SIS for any Development or Activity (as defined by the EP&A Act) proposed for the declared area. Under the normal processes of the EP&A Act any activity likely to have a significant impact should be identified by the Consent or Determining Authority by applying the test of significance under Part 5A of the EP&A Act. In such circumstances, a SIS should be required even if the area were not declared critical habitat. Therefore in this event, declaration of the area as critical habitat would not impose additional economic or social costs.

There is a potential additional cost in the event that an SIS is required for an activity that is proposed for the designated area, even if the application of the test of significance indicates that the activity will not have a significant effect on an endangered species, population or community. However, it should be noted that the preparation of a SIS can be waived by the DEC under certain circumstances, as s. 111(4) of the TSC Act gives the Director General power to “*having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director General is satisfied that the impact of the activity concerned will be trivial or negligible*”.

The declaration of critical habitat does not in itself prevent any change in land use and consequently, it does not lead directly to any other social or economic effects, positive or negative. However, in most instances, before any activity could take place, an EIS/SIS would have to be prepared and at this time social and economic impacts would, appropriately, be considered in detail.

## **8. Value of a Declaration of Critical Habitat to the Conservation of the Wollemi Pine**

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A declaration of critical habitat for the Wollemi Pine is considered to be justified for the following reasons:

1. The Wollemi Pine is an important relict of past climates and vegetation and has an extremely restricted distribution;
2. Its social importance is high due to its strong link to the Jurassic/dinosaur age. Protection of this unique species in the wild is essential;
3. There is a serious risk to survival of the Wollemi Pine in the wild from the recent introduction of a plant pathogen. Protection of the wild population from unauthorised visitation is the best way to minimise the risk of further introductions of pathogens and to minimise their spread. The Wollemi Pine is highly desirable for horticulture and the species requires protection from illegal harvesting in the wild. The current strategy of keeping the location withheld helps to minimise potential damaging visitation; and
4. The declaration of critical habitat will afford increased protection measures if the unauthorised visitation levels reach an unacceptable level.

The overall objective of the designation of critical habitat is to protect the wild population.

## **9. Preparation Details**

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This Assessment Report was prepared by the Wollemi Pine Recovery Team.

## **10. References**

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- Floyd A. (1984) Rainforests of Wollemi & Goulburn River National Parks. NPWS Internal Report.
- NPWS (1999) Wollemi pine (*Wollemia nobilis*) recovery plan. National Parks & Wildlife Service.
- Department of Environment and Conservation (NSW) (2006). *Wollemia nobilis Recovery Plan*, Department of Environment and Conservation (NSW), Hurstville. NSW..

**Appendix 1: Critical Habitat Map for The Wollemi Pine (*Wollemia nobilis*)**

A map of the Critical habitat area will not be published unless the Wollemi Pine Recovery Team considers the threats of unauthorised visitation have reached a significant level and the security of the Wollemi Pine has been compromised. This has been done in order to protect the species from illegal visitation as recommended in the recovery plan for the Wollemi Pine.

## **Appendix 2: Summary of the Main Statutory Implications of Critical Habitat Identification and Declaration**

Statutory requirements regarding critical habitat are contained in the *Threatened Species Conservation Act 1995* (TSC Act), *Environmental Planning and Assessment Act 1979* (EP&A Act), *National Parks and Wildlife Act 1974* (NP&W Act), *Rural Fires Act 1997* (RF Act), *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act), *Local Government Act 1993* (LG Act), *State Emergency and Rescue Management Act 1989* (SERM Act), *State Emergency Service Act 1989* (SES Act) and *Native Vegetation Conservation Act 1997* (NV Act). To determine the statutory implications of the declaration, these Acts should be referred to. A brief summary of the statutory requirements (as at December 2006) is provided below.

- Declared critical habitat must be mapped on the relevant Local Environmental Plan and Regional Environmental Plan (s.26 of the EP&A Act as amended 1998).
- The Director General of the Department of Planning must consult with the Director General of the Department of Environment and Conservation before preparing a draft State Environmental Planning Policy, or an Environmental Study or a draft Regional Environmental Plan, if, in the opinion of the DEC Director General, critical habitat will or may be affected by the draft policy, environmental study or draft plan (s.34A(1) of the EP&A Act).
- Councils must also consult with the Director General of the Department of Environment and Conservation before preparing an Environmental Study, or a draft Local Environmental Plan, if, in the opinion of the council, critical habitat will or may be affected by the Environmental Study or draft plan (s.34A(2) of the EP&A Act).
- If land declared as critical habitat is land to which a Local Environmental Plan, Regional Environmental Plan or State Environmental Planning Policy applies, the Plan must be amended by the relevant Council, and the Department of Planning in a manner that identifies the land that is declared as critical habitat.
- The maintenance of a register of all critical habitat declarations (s.55(1) of the TSC Act).
- A planning authority (eg. local council) must have regard to the register of critical habitat when exercising any of its functions under the EP&A Act (s.5B(1) of the EP&A Act).
- A person must not, by an act or an omission, do anything that causes damage to any critical habitat (s.118C of the NP&W Act). However, it is a defence to a prosecution for an offence against this section of the NPW Act if the accused proves that the act constituting the offence was:
  - authorised to be done, and was done in accordance with, a licence granted under the NPW Act or a licence or certificate granted under Part 6 of the TSC Act;
  - essential for the carrying out of development in accordance with a development consent within the meaning of the EP&A Act;
  - essential for the carrying out of an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of the EP&A Act if the determining authority has complied with the Part;
  - authorised to be done by or under the RF Act, the SERM Act or the SES Act and was reasonably necessary in order to avoid a threat to life or property;
  - was authorised by, and done in accordance with a conservation agreement;
  - was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the TSC Act; or

- carried out under an approved Property Management Plan or as a routine agricultural management activity.
- While it is a defence against prosecution under s. 118D (1) of the NP&W Act that a defendant did not know they were affecting habitat of a threatened species, population or ecological community, this is not a defence if critical habitat of an endangered species, population or ecological community is affected (NP&W Act, s. 118C (1)).
- A development proposed on land which is critical habitat may not be considered an exempt development (s.76 of the EP&A Act). This means that all developments occurring on land that is critical habitat either require a s. 91 licence under the TSC Act or must go through the development consent process under the EP&A Act.
- A development may not be considered a complying development if it occurs on land that is critical habitat (s.76A(5) of the EP&A Act). This means that developments proposed on land that is critical habitat may not be approved by an accredited certifier, but must be approved by the consent authority.
- A determining authority must not carry out an activity, or grant an approval in relation to an activity that is in respect of land that is, or is a part of, critical habitat unless a Species Impact Statement (SIS), or an Environmental Impact Statement that includes a SIS, has been prepared in accordance with the TSC Act (s.78A(8) of the EP&A Act). Section 112C of the EP&A Act ensures that in such circumstances a determining authority (with the exception of where the authority is a Minister) will not carry out, or grant an approval to carry out, an activity without the concurrence of the Director General of the Department of Environment and Conservation. Where a Minister is the determining authority he or she must only consult with the Minister administering the TSC Act.
- When conducting an assessment under part 5A of the EP&A Act, consent authorities are required to consider whether the activity or development will affect critical habitat. This means that activities and developments, which are not carried out on land that is critical habitat, may trigger a SIS if they are likely to have an indirect impact.
- Any action which does not require consent or approval under the EP&A Act but which damages critical habitat can only be legally undertaken under the authority of a licence granted under the NPW Act or a licence or certificate granted under Part 6 of the TSC Act the licence. It should be noted that if the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a SIS.
- However, according to s. 111(4) of the TSC Act; despite anything in the TSC Act or the EP&A Act (including critical habitat), the Director General of the Department of Environment and Conservation may, having regard to the circumstances of a particular case, dispense with the requirement for a SIS in the particular case if the Director General is satisfied that the impact of the activity concerned will be trivial or negligible.

**Appendix 3: Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2006**



New South Wales

# Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007

under the

Threatened Species Conservation Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Threatened Species Conservation Act 1995*.

BOB DEBUS, M.P.,  
Minister for the Environment

## Explanatory note

The objects of this Regulation are as follows:

- (a) to prohibit a person from entering or remaining in the Wollemi Pine critical habitat, or any part of it, if the area is closed by the Director-General by means of a public notice,
- (b) to allow the Director-General to also close the Wollemi Pine critical habitat, or any part of it, by written order (this being an alternative means of closing the critical habitat without disclosing the location of the critical habitat to the public),
- (c) to allow a designated officer to direct a person to leave the Wollemi Pine critical habitat if it has been closed by public notice or by a written order,
- (d) to allow a designated officer to direct a person to leave the Wollemi Pine critical habitat or to cease or modify a particular activity within the Wollemi Pine critical habitat if he or she is of the opinion that the person is contravening the new provisions of the Regulation or causing damage to the Wollemi Pine critical habitat, or is likely to do so,
- (e) to give a designated officer the power to remove a person from the Little Penguin and Wollemi Pine critical habitats if the person fails to comply with a direction,
- (f) to prescribe all offences under the *Threatened Species Conservation Regulation 2002* as penalty notice offences and to prescribe a penalty of \$500 for each of those offences if dealt with by penalty notice,
- (g) to make other minor amendments by way of law revision.

This Regulation is made under the *Threatened Species Conservation Act 1995*, including sections 51 and 150 (the general regulation-making power) and under section 160 of the *National Parks and Wildlife Act 1974*.

Clause 1           Threatened Species Conservation Amendment (Wollemi Pine) Regulation  
2007

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## **Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007**

under the

Threatened Species Conservation Act 1995

### **1 Name of Regulation**

This Regulation is the *Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007*.

### **2 Amendment of Threatened Species Conservation Regulation 2002**

The *Threatened Species Conservation Regulation 2002* is amended as set out in Schedule 1.



Threatened Species Conservation Amendment (Wollemi Pine) Regulation  
2007

Amendments

Schedule 1

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## Schedule 1 Amendments

(Clause 2)

### [1] Clause 3 Definitions

Omit the definition of *authorised officer*. Insert in alphabetical order:

*designated officer* means:

- (a) an officer or employee of the Department of Environment and Conservation, or
- (b) a person who is authorised by the Director-General to exercise the powers conferred on a designated officer by this Regulation, or
- (c) a police officer.

### [2] Clause 3 (2)

Insert at the end of clause 3:

- (2) A person who, immediately before the commencement of the *Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007*, was authorised by the Director-General to exercise the powers conferred on an authorised officer by this Regulation is taken, on that commencement, to be authorised to exercise the powers conferred on a designated officer by this Regulation.

### [3] Clause 11 Directions given by a designated officer

Omit "an authorised officer" wherever occurring from clause 11 (1) and (3) (b).

Insert instead "a designated officer".

### [4] Clause 11 (1)

Omit "Regulation". Insert instead "Part".

### [5] Clause 11 (3)

Omit "the authorised officer". Insert instead "the designated officer".

Threatened Species Conservation Amendment (Wollemi Pine) Regulation  
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Schedule 1 Amendments

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[6] **Clause 11A**

Insert after clause 11:

**11A Removal of persons who fail to comply with a direction**

A designated officer may remove from the Little Penguin critical habitat, or any part of it, any person who fails to comply with a direction under clause 11 and any vehicle, vessel, animal or other property in the possession of the person.

[7] **Clause 12 Defences**

Omit "this Regulation". Insert instead "this Part".

[8] **Clause 12 (e) (i)**

Omit "National Parks and Wildlife Service".

Insert instead "Department of Environment and Conservation".

[9] **Clause 12 (e) (ii)**

Omit "an authorised officer". Insert instead "a designated officer".

[10] **Clause 12 (e) (iii)**

Omit "NSW Fisheries, the Waterways Authority or the Environment Protection Authority".

Insert instead "the Department of Primary Industries or the Maritime Authority of NSW".

[11] **Clause 12 (e) (iv)**

Insert "(either unconditionally or subject to conditions)" after "given".

[12] **Part 2A**

Insert after Part 2:

**Part 2A Wollemi Pine critical habitat**

**12A Definitions**

In this Part:

*damage* to the Wollemi Pine critical habitat includes:

- (a) picking any plant within the Wollemi Pine critical habitat, and
- (b) clearing or removing any vegetation (whether or not living) within the Wollemi Pine critical habitat, and

Threatened Species Conservation Amendment (Wollemi Pine) Regulation  
2007

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Schedule 1

- 
- (c) harming any animal within the Wollemi Pine critical habitat, and
  - (d) introducing, or causing the spread of, *Phytophthora cinnamomi* within the Wollemi Pine critical habitat.

**harm** an animal includes hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill, but does not include harm by changing the habitat of an animal.

**pick** a plant means gather, pluck, cut, pull up, destroy, poison, take, dig up, remove or injure the plant or any part of the plant.

**Wollemi Pine critical habitat** means any area of land declared by the Minister to be the critical habitat of the endangered species *Wollemia nobilis* (Wollemi Pine), by notification published in the Gazette under section 47 of the Act (as amended from time to time under section 49 of the Act).

**12B Application and operation of Part**

- (1) This Part does not have effect until the notification referred to in the definition of **Wollemi Pine critical habitat** is published in the Gazette.
- (2) Nothing in this Part affects the operation of Part 2 of the *National Parks and Wildlife Regulation 2002*.

**Note.** For example, under Divisions 1 and 3 of Part 2 of the *National Parks and Wildlife Regulation 2002*, a park authority may regulate the use and closure of a national park by means of a public notice, a written notice or an oral direction and an authorised officer may remove a person from a national park in certain circumstances.

**12C Closure of Wollemi Pine critical habitat by public notice**

- (1) The Director-General may close the Wollemi Pine critical habitat, or any part of it, to the public by means of a notice displayed in, or at the boundary of, the Wollemi Pine critical habitat or the part of it to which the notice relates.
- (2) The notice may close the Wollemi Pine critical habitat, or any part of it, to the public at all times or during specified times.
- (3) A person must not:
  - (a) enter the Wollemi Pine critical habitat, or the part of it, when it is closed to the public in accordance with this clause, or

Threatened Species Conservation Amendment (Wollemi Pine) Regulation  
2007

Schedule 1 Amendments

- (b) remain, or leave a vehicle parked, in the Wollemi Pine critical habitat or any part of it when it is closed to the public in accordance with this clause.

Maximum penalty: 50 penalty units.

**12D Closure of Wollemi Pine critical habitat by order**

- (1) The Director-General may, by order in writing, close to the public the Wollemi Pine critical habitat or any part of it.
- (2) The order may close the Wollemi Pine critical habitat, or any part of it, to the public at all times or during specified times.

**Note.** The Director-General may decide not to disclose the location of critical habitat to the public under section 146 of the *Threatened Species Conservation Act 1995*. This clause gives the Director-General an alternative means of closing the critical habitat without disclosing the location of the critical habitat to the public.

**12E Directions given by a designated officer**

- (1) If the Wollemi Pine critical habitat, or any part of it, is closed to the public in accordance with clause 12C or 12D, a designated officer may direct a person to leave the area that is closed to the public.
- (2) If a designated officer is of the opinion that a person is contravening this Part or causing damage to the Wollemi Pine critical habitat, or is likely to do so, the officer may make one or more of the following directions:
- (a) direct the person to cease a particular activity within the Wollemi Pine critical habitat,
  - (b) direct the person to modify a particular activity within the Wollemi Pine critical habitat so as to avoid any damage or likelihood of damage to the Wollemi Pine critical habitat,
  - (c) direct the person to leave the Wollemi Pine critical habitat.
- (3) A person must not, without reasonable excuse, fail or refuse to comply with a direction given under subclause (1) or (2).  
Maximum penalty: 50 penalty units.
- (4) A person is not guilty of an offence of failing or refusing to comply with a direction given under subclause (1) or (2) unless it is established that the designated officer:
- (a) warned the person that a failure or refusal to comply with the direction is an offence, and
  - (b) identified himself or herself to the person as a designated officer.

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**12F Removal of persons who fail to comply with a direction**

A designated officer may remove from the Wollemi Pine critical habitat, or any part of it, any person who fails or refuses to comply with a direction under clause 12E and any vehicle, animal or other property in the possession of the person.

**12G Defences**

It is a defence to a prosecution for an offence against this Part if the defendant proves that the act constituting the offence:

- (a) was authorised to be done, and was done in accordance with, a licence granted under the *National Parks and Wildlife Act 1974* or under Part 6 of the *Threatened Species Conservation Act 1995*, or
- (b) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*, or
- (c) was authorised to be done by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
- (d) was carried out:
  - (i) by an officer or employee of the Department of Environment and Conservation in the exercise of his or her functions as such an officer or employee, or
  - (ii) by a designated officer in the exercise of his or her functions as such an officer, or
  - (iii) with the consent of the Director-General given (either unconditionally or subject to conditions) in the form of a licence, permit, approval or other form of written authorisation.

**[13] Part 4 and Schedule 1**

Insert after Part 3:

**Part 4 Penalty notices****34 Penalty notice offences**

- (1) For the purposes of section 160 of the *National Parks and Wildlife Act 1974*:
  - (a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and

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- (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 1, and
  - (c) each person referred to in subclause (3) is a prescribed person.
- (2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.
- (3) For the purposes of section 160 of the *National Parks and Wildlife Act 1974*, the following persons are prescribed persons for all offences referred to in Schedule 1:
- (a) the Director-General,
  - (b) any officer or employee of the Department of Environment and Conservation,
  - (c) any person who is authorised by the Director-General to exercise the powers conferred on a designated officer by this Regulation,
  - (d) any police officer,
  - (e) any officer or employee of a government department in respect of which an arrangement has been made under section 11 (1) of the *National Parks and Wildlife Act 1974*,
  - (f) any officer, employee or servant of a statutory corporation or council, or of trustees, in respect of whom or which an arrangement has been made under section 11 (2) or (4) of the *National Parks and Wildlife Act 1974*.

## Schedule 1 Penalty notice offences

(Clause 34)

Column 1	Column 2
Provision	Penalty \$
<b>Offences under this Regulation</b>	
Clause 7 (1)	\$500
Clause 7 (2)	\$500
Clause 7A (1)	\$500

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<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty \$</b>
Clause 8 (1)	\$500
Clause 9	\$500
Clause 10 (1)	\$500
Clause 10 (2)	\$500
Clause 11 (2)	\$500
Clause 12C (3)	\$500
Clause 12E (3)	\$500

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**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
**THREATENED SPECIES CONSERVATION ACT 1995**

Declaration under s47(3) of land as critical habitat for Wollemi Pine (*Wollemia nobilis*)

I hereby declare all known extant areas of the Wollemi Pine and the surrounding habitat in the catchment as critical habitat. The critical habitat is located within the catchment where the Wollemi Pine occurs within the Wollemi National Park. This represents some 5,000 ha of the 500,000 ha Wollemi National Park.

The Director-General has declined to prepare map of the critical habitat for publication at this stage, in accordance with section 146 of the Threatened Species Conservation Act 1995.

This constitutes notice of the declaration under s 48(c).

BOB DEBUS,  
Minister for the Environment

LISA CORBYN,  
Director General Department of Environment and Conservation

**Notice under s67(1) of approval of Wollemi Pine Recovery Plan**

I hereby give notice of the approval of the Wollemi Pine (*Wollemia nobilis*) Recovery Plan.

LISA CORBYN,  
Director General Department of Environment and Conservation

Information relating to the sale and inspection of the Wollemi Pine Recovery Plan and critical habitat declaration can be found on the following website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au).





Department of  
Environment and  
Conservation (NSW)

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